IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2561 OF 2005

The Divisional Controller,
N.W.K.R.T.C., Belgaum Div. ...Appellant
Vs.
Appaso Shankar Naik & Anr. ...Respondents

Mr.C.M.Lokesh for the Appellant
Mr.B.A.Jagoje for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 17,2006.

P.C.:

1. Heard Shri Lokesh for the Appellant. The Appellant is the Divisional Controller of the Karnataka State Road Transport Corporation. The challenge in the First Appeal is to the Award made under section 166 of the Motor Vehicles Act, 1988 by the learned Member of the Motor Accident Claims Tribunal, Kolhapur.

2. The learned Advocate for the Appellant submitted that there was absolutely no evidence on record to prove any negligence on the part of the driver employed by the Appellant. He submitted that the multiplier of 16 applied by the Tribunal is on the higher side. The Advocate appearing for the Respondents supported the impugned Judgment and Award.

3. I have considered the submissions. The Claim Petition was filed on 1st November 2002. On 17th April 2003, the learned Member of the Tribunal passed an order directing that the Claim Petition will be proceed without written statement

of the Appellant. By making an application at Exh.13 the Appellant applied for setting aside the order dated 17th April 2003. The said application was allowed by the learned Member of the Tribunal subject to payment of costs of Rs.100/- to be paid by the Appellant to the original claimants. The learned Member has noted in the impugned Judgment that even the said sum of Rs.100/- was not paid by the Appellant and that is the reason why written statement filed by the Appellant was not taken into consideration by the Tribunal.

4. It is pertinent to note that on 30th July 2003 the original claimants were directed to file their claim Affidavit for proving their claim. The claim Affidavit was filed on 3rd October 2003. The impugned Award is passed on 6th December 2003. In the meanwhile, no attempt has been made by the Appellant to pay a nominal amount Rs.100/- by way of costs. In view of this position, no fault can be found if the learned Member of the Tribunal has not taken into consideration the written statement tendered by the Appellant. The learned Member did not allow the case to suffer on account of lapse on the part of the Appellant. Moreover, he directed the claimants to lead their evidence to prove their claim. He did not pass award only on the ground of failure on the part of the Appellant to file written statement. Accordingly, the Affidavit of claim was filed. Certified copies of spot panchnama and F.I.R. were produced by the claimants. In view of the failure of the Appellant to

defend the claim and in view of the contents of the documents which were placed on record by the claimants, a finding has been recorded as regards the negligence on the part of the driver of the bus. Considering the conduct of the Appellant no fault can be found with the said finding.

5. The learned Advocate for the Appellant made a grievance regarding multiplier of 16 applied by the Tribunal. It must be noted here that the age of the deceased was only 22 years at the time of accident. Therefore, no fault can be found with multiplier of 16 which was applied by the Tribunal.

6. It must be noted here that the claimants produced a copy of salary certificate showing that the deceased was drawing a salary of Rs.4500/-. However, the Tribunal considered the salary of the deceased at the rate of Rs.1200/- p.m. From the said amount, one third amount is deducted towards personal expenditure. Instead of awarding usual amount of Rs.15,000/- for loss of consortium etc., only a sum of Rs.12,000/- has been awarded. The compensation of Rs.1,65,600/- awarded by the Tribunal is just and proper. The learned Advocate for the claimants stated that the claimants do not desire to file cross objection.

7. No case for interference is made out. The Appeal is dismissed with no order as to costs.

8. The Advocate for the appellant pointed out that a sum of

Rs.25,000/- has been deposited in this Court in compliance with section 173 of the said Act of 1988. The Registrar General is directed to transfer the said amount to the concerned Tribunal so that the same can be appropriated towards payment of compensation to the claimants.

Judge.